

Andrew D. Lipman
Direct Phone: 202.373.6033
Direct Fax: 202.373.6001
andrew.lipman@bingham.com

October 29, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Special Access Rates for Price Cap Local Exchange
Carriers, WC Docket No. 05-25**

Dear Ms. Dortch:

MetroPCS Communications, Inc. ("MetroPCS") respectfully submits this letter to urge the Commission to take measures promptly in this proceeding to strengthen rules governing provision of interstate special access service by price cap incumbent local exchange carriers ("ILECs").

MetroPCS is the nation's leading provider of flat-rated unlimited wireless communications service with no signed contract and among the fastest growing facilities-based wireless telecommunications carriers in the United States. MetroPCS provides wireless broadband personal communications services to over 3.6 million subscribers. MetroPCS provides commercial mobile radio services in selected metropolitan areas throughout the United States, including in Miami, Atlanta, Tampa/Sarasota, San Francisco, Sacramento, Los Angeles, Dallas/Ft. Worth and Detroit. MetroPCS targets a mass market largely underserved by the large national wireless carriers.

The record in this proceeding makes clear that the Commission's special access pricing rules fail to assure reasonable prices and practices as required under Section 201(b) of the Act. The Commission's rules permit ILECs to charge rates and impose other unreasonable terms and conditions that reflect their control of access to the overwhelming majority of customer locations.¹

¹ See, e.g., Comments of ATX Communications, Inc. *et al.*, WC Docket No. 05-25, at 15 (filed Aug. 8, 2007). As demonstrated by ATX Communications, Inc. *et al.*, in absolute dollars, BOCs have overcharged \$8.31 billion last year in excessive special access revenues or 22.77 million in overcharges per day in 2006. *Id.* at 14.

Wireless companies including MetroPCS have few if any alternatives to the ILECs special access services for reaching many of their cell sites, and few non-ILEC vendors have deployed or plan to deploy high capacity or fiber facilities that reach cell sites.² MetroPCS relies extensively on special access services such as DS1 and DS3 loops to connect its cell towers to its mobile telephone switching offices. A study submitted by Economics and Technology, Inc. ("ETI") in this proceeding shows that without access to these facilities, there would be limited wireless services because they connect 90% of all wireless cell sites to the wireless carriers' switches.³

As MetroPCS continues to build-out and expand its network and services offered in its current and future service areas, its reliance on special access services will continue and likely increase. MetroPCS was very active in Auction 66 and is currently in the process of building-out in areas for which it acquired licenses in that auction which cover a total unique population of approximately 117 million. Instead of making additional investments into its network to provide enhanced or new services to its markets, MetroPCS however, like other wireless carriers who rely on special access services, must recover from its customers a portion of the exorbitant special access rates it is charged.⁴ Consumers ultimately suffer from the high cost of special access.⁵ Also, because MetroPCS is a new entrant, many of the volume purchase agreements that other carriers are able to use to lower their costs are not as useful to MetroPCS. Although MetroPCS may qualify for some limited volume discounts, it is at a competitive disadvantage *vis-a-vis* long established carriers who have substantially more facilities within a given ILEC service territory and thus are entitled to substantially larger discounts from the ILEC's high rates.

² See, e.g., Comments of Sprint Nextel Corp., WC Docket No. 05-25, at 31-32 (filed Aug. 8, 2007); Reply Comments of T-Mobile USA, Inc., WC Docket No. 05-25 at 2 (filed Aug. 15, 2007); Reply Comments of Sprint Nextel Corp., WC Docket No. 05-25, at 6-11 (filed Aug. 15, 2007); Letter from Todd D. Dauber, Counsel for SouthernLINC Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 3 (filed Oct. 22, 2007).

³ See Lee L. Selwyn, *Special Access Overpricing and the US Economy*, at 2 (August 2007) filed as an attachment to Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 05-25, at Appendix 1 (filed Aug. 8, 2007).

⁴ See, e.g., Comments of T-Mobile USA, Inc., WC Docket No. 05-25, at 8 (filed Aug. 8, 2007).

⁵ *Id.*

Marlene H. Dortch
October 29, 2007
Page 3

Because ILECs remain monopoly providers of special access facilities to the vast majority of customer and cell site locations, the regulatory relief they have obtained under the Commission's failed pricing flexibility rules has resulted in substantial and sustained special access price increases.⁶ ILECs continue to possess market power in the provision of special access because they have maintained or raised their DS1 special access rates when given pricing flexibility and have been able to both retain customers and increase sales in the wake of rising prices.⁷ The Commission therefore should act promptly in this proceeding to correct market failure in provision of special access services.

Sincerely yours,



Andrew D. Lipman
Patrick J. Donovan

Counsel for MetroPCS Communications, Inc.

and

Mark A. Stachiw, Esq.
Sr. Vice President, General Counsel, and Secretary
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, TX 75231

⁶ See, e.g., Reply Comments of 360 Networks (USA), Inc. *et al.*, WC Docket No. 05-25, at 10-13 (filed Aug. 15, 2007).

⁷ *Id.* See also, Letter from Christopher Wright *et al.*, counsel to Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1 (filed Oct. 5, 2007) (noting that "special access prices are significantly higher than comparable unbundled network element prices and many times the prices for comparable services offered in broadband markets.") (citations omitted).